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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,924	03/28/2005	Carsten Hermansen	742113-33	1913
25570	7590	03/26/2008		
ROBERTS, MLOTKOWSKI & HOBBS				
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MCLEAN, VA 22102-8064				
EXAMINER				
DENTER, CLARK F				
ART UNIT		PAPER NUMBER		
3724				
NOTIFICATION DATE		DELIVERY MODE		
03/26/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/523,924

Applicant(s)

HERMANSEN ET AL.

Examiner

Clark F. Dexter

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2007.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-14 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 07 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date 3/28/07
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. The amendment filed on July 17, 2007 has been entered. As described in the telephone interview summary of November 6, 2007 (mail/notification date 11/13/2007), applicant's position is that the response filed July 17, 2007 is responsive to the issue described in the Office communication of October 6, 2007. The Examiner agreed with applicant. Therefore, the Office communication mailed October 6, 2007 has been **VACATED**.

Information Disclosure Statement

2. The information disclosure statement filed on March 28, 2007 has been received and the references listed thereon have been considered.

Claim Objections

3. Claims 1-14 are objected to because of the following informalities:

In claim 1, line 2, it seems that "extruder and" should be changed to --extruder having-- for clarity; in line 3, it seems that a comma --,-- should be inserted after "extruded"; in line 5, --said-- or --the-- should be inserted before "product pieces".

In claim 2, line 2, "guided in a" should read --guided in the-- since the first transverse stroke has already been set forth in claim 1; in line 5, the "recitation "an oppositely directed stroke" is not sufficiently clear and should be changed to --the second stroke-- or the like.

In claim 3, line 2, --of the first knife-- should be inserted after "first stroke length" for clarity.

In claim 4, line 2, it seems that "in" should be changed to --of-- for clarity.

In claim 7, line 5, --of the cutting means-- should be inserted after "first knife" for clarity; in line 6, --of the cutting means-- should be inserted after "second knife" for clarity; in line 11, --cuts-- should be inserted after "the second knife"; in line 12, --cream-- should be inserted after "ice" for clarity and consistency.

In claim 13, line 4, it seems that --a-- should be inserted before "drive means" (as has been done in claim 10).

In claim 14, line 4, it seems that --a-- should be inserted before "drive means" (as has been done in claim 10).

Appropriate correction is required.

Claim Rejections - 35 USC § 112, 1st paragraph

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-14 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

As stated in the previous Office action, the disclosure does not provide sufficient support for the invention as claimed, particularly for the drive structure of the cutting device. For example, the specific structure to simultaneously drive the knives and to provide the knives with different stroke lengths is not sufficiently disclosed and thus it is not clear as to how such a function is accomplished. Further, the figures, particularly Figure 5, do not clearly illustrate the structure to perform the claimed functions. As a further example, the specific structure of the drive components including the rotor means, the coupling means and the rotating drive means are not sufficiently disclosed, and thus it is not clear as to how they interact with one another as well as how they act together to drive the knives.

Claim Rejections - 35 USC § 112, 2nd paragraph

6. Claims 6 and 11 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, lines 2-4, the recitation "means for activating the coupling ..." is vague and indefinite as to what disclosed structure it refers, particularly since it is not clear as to what part of the control means, which corresponds to the disclosed frame 9 that performs the guiding functions set forth in claim 2, is capable of performing the recited activating functions.

In claim 11, line 1, "the coupling means" lacks antecedent basis.

Claims Not Rejected Over Prior Art

7. Claims 1-14 are considered to read over the prior art of record because the prior art or record does not teach or suggest the combination of features as claimed. However, these claims **cannot** be considered to be "allowable" at this time due to the rejection(s) under 35 U.S.C. 112, 1st paragraph set forth in this Office action. Therefore, upon the claims being rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112 set forth in this Office action, further consideration of these claims with respect to the prior art will be necessary.

Response to Arguments

8. Applicant's arguments filed July 17, 2007 have been fully considered but they are not persuasive.

In the fifth paragraph on page 8 to the second paragraph on page 8 of the subject response, applicant argues that the disclosure of the present application is sufficient to enable one of ordinary skill in the art to make and/or use the invention. The Examiner respectfully disagrees.

For example, it remains unclear as to how the gear mechanisms 14, 15 operate and how these gear mechanisms are controlled to perform the disclosed functions. MPEP 2164.06(a) states that:

"It is common that doubt arises about enablement because information is missing about one or more essential parts or relationships between parts which one skilled in the art could not develop without undue experimentation. In such a

case, the examiner should specifically identify what information is missing and why the missing information is needed to provide enablement."

Further, it has been held that:

An adequate disclosure of a device may require details of how complex components are constructed and perform the desired function. The claim before the court in *In re Scarbrough*, 500 F.2d 560, 182 USPQ 298 (CCPA 1974) was directed to a system which comprised several component parts (e.g., computer, timing and control mechanism, A/D converter, etc.) only by generic name and overall ultimate function. The court concluded that there was not an enabling disclosure because the specification did not describe how "complex elements known to perform broadly recited functions in different systems would be adaptable for use in Appellant's particular system with only a reasonable amount of experimentation" and that "an unreasonable amount of work would be required to arrive at the detailed relationships appellant says that he has solved." 500 F.2d at 566, 182 USPQ at 302.

In the present application, given the complex operation and the necessary timing of the cutting knives having the different stroke lengths, it is respectfully submitted that sufficient details have not been disclosed to support the claims to the present invention.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (571)272-4505. The examiner can normally be reached on Mondays, Tuesdays, Thursdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571)272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Clark F. Dexter/
Primary Examiner, Art Unit 3724**

cf
March 7, 2008